

BOOK

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STATE OF TENNESSEE

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IRENE L. BROWNLOW  
FAMILY TRUST AGREEMENT

BK 79 PG 757  
W.E. DAVIS CH. CLK.

THIS TRUST AGREEMENT is made this 29 day of December, 1998, by and among MARY CARROLL LEATHERMAN and S. RICHARD LEATHERMAN, JR., both of Shelby County, Tennessee, hereinafter collectively called "Grantor", and IRENE L. BROWNLOW and GIRARD P. BROWNLOW, both of Shelby County, Tennessee, hereinafter collectively called "Trustee", for the formation of a trust to be known as the "IRENE L. BROWNLOW FAMILY TRUST."

1. **Corpus of Trust.** The Grantor, in consideration of the promises and covenants herein contained, has delivered to the Trustee One Hundred Dollars (\$100.00) in cash, receipt of which is acknowledged. In addition, Grantor or anyone else may add cash, securities or other property of any and every kind to the Trust by Will or by inter vivos gift or grant; and the Trustee agrees to hold and administer such property in accordance with the terms and provisions of this Trust Agreement.

2. **Beneficiaries' Right of Withdrawal.** Upon each contribution to this Trust, the contributor of such property, or the Trustee upon the request of the contributor shall notify those beneficiaries designated in subpart (c) below that they each have the right, exercisable within thirty (30) days of such contribution to the Trust, to make withdrawal of trust principal as follows:

a. Whether or not the contributor, or at the contributor's request, the Trustee, has complied with the requirement to notify the beneficiaries hereunder of the same, immediately upon each contribution to this Trust, each of the beneficiaries designated in subpart (c) below shall have the right and power in regard to each such contribution to withdraw an amount equal to the amount permitted under subpart (c) below within thirty (30) days of such contribution, payable in cash or in kind immediately upon receipt by the Trustee of the demand in writing. Any notice to or by a beneficiary who is a minor shall be made to or by the person who has the care or custody of such minor on such minor's behalf.

b. This right of withdrawal, as respects each beneficiary, shall lapse within thirty (30) days of the contribution to the trust which gave rise to such withdrawal right; provided, however, that in no event shall any one beneficiary's withdrawal right lapse in excess of the amount not treated as a release of a general power of appointment as set forth in §2514(e) or §2041(b)(2), as applicable, of the Internal Revenue Code of 1986, as amended from time to time, per calendar year, after including in that amount all lapses of withdrawal rights in any other trust in which the respective beneficiary may have withdrawal rights. In the event that the entire right of withdrawal of a beneficiary in any calendar year shall not lapse by

reason of the foregoing lapse limitation, then the excess shall be carried forward to and lapse in the next succeeding year which, together with all future years, shall also be subject to the lapse limitations set forth above.

c. For purposes of the foregoing right of withdrawal, the descendants of **IRENE L. BROWNLOW** shall each have the right of withdrawal equal to the amount added to this Trust which is subject to withdrawal divided by the total number of beneficiaries with withdrawal rights. However, no such withdrawal right shall ensue with respect to (i) any amount in excess of twice the annual per donee exclusion amount designated in §2503(b) of the Internal Revenue Code of 1986, as amended from time to time, per beneficiary; or (ii) any property added to this Trust by reason of the death of any person.

3. **Distribution of Trust Assets.** The assets of this Trust shall be held, administered and distributed as follows:

a. **Income and Principal Distributions.** The Trustee shall distribute to or for the benefit of **IRENE L. BROWNLOW, GIRARD P. BROWNLOW** and the descendants of **IRENE L. BROWNLOW** so much of the net income and principal of this Trust to be allocated among the beneficiaries as the Trustee, in the Trustee's sole and absolute discretion, deems advisable for the health, education, maintenance and support of each such beneficiary, after first taking into account, to the extent the Trustee deems advisable, other resources available to each beneficiary. Such distributions shall not necessarily be equal as to each beneficiary, but shall be made according to the hereinabove specified needs of each beneficiary determined separately. Any income not distributed hereunder shall be added to trust principal and invested.

b. **Termination of Trust.** This Trust shall terminate twenty-one (21) years after the death of the last beneficiary of this trust who is living at the date of the execution of this Agreement. Upon such termination, the Trustee shall distribute the remaining assets of this Trust equally to the then living descendants of **IRENE L. BROWNLOW**, per capita.

c. **Limitation on Distributions** If, pursuant to subpart (b) above, any property of this Trust becomes distributable outright and free of trust to any beneficiary before said beneficiary has attained the age of twenty-one (21) years, then said property shall immediately vest in the beneficiary, but the Trustee shall retain possession of such property during the period in which such beneficiary is under the age of twenty-one (21) years, and, in the meantime, the Trustee shall use and expend so much of the income and principal of such property as the Trustee deems necessary or desirable for the care, support and education of such beneficiary and any income not so expended shall be added to principal. The Trustee shall have, with respect to each share so retained, all of the power and discretion it had generally with respect to the Trust created hereunder. Should any such beneficiary die before attaining the age of twenty-one (21) years, the remainder of the assets then held by the Trustee by virtue of this section for such beneficiary shall then be delivered over and

distributed by the Trustee in fee simple to the legal representative of the estate of such beneficiary to be distributed as a part thereof.

d. **Limitations on Trustee/Beneficiaries.** No Trustee serving hereunder who is also a beneficiary of this trust shall have authority to make distributions to himself or herself, but any determination of a distribution to a beneficiary who is also a Trustee shall be made by the Co-Trustee serving with such trustee/beneficiary in such Co-Trustee's sole and absolute discretion. It being Grantor's intention by this provision that the appointment of a trustee who is also a beneficiary of this trust shall not cause the trustee/beneficiary to possess a general power of appointment or any other power which would cause the trust assets to be included in such trustee/beneficiary's estate, and this trust agreement shall be construed in such a fashion so as to accomplish this intent even to the extent of deeming as modified or void any provision herein which would cause the trust assets to be included in the taxable estate of any trustee/beneficiary.

e. **Regarding the Spouse of Irene L. Brownlow.** This Trust Agreement provides for IRENE L. BROWNLOW's spouse, GIRARD P. BROWNLOW, to be a beneficiary of this trust and a Co-Trustee hereunder. In the event that prior to the death of GIRARD P. BROWNLOW, he and IRENE L. BROWNLOW are divorced or otherwise cease to live together as husband and wife, then GIRARD P. BROWNLOW shall immediately cease to be a beneficiary of this trust and a Co-Trustee hereunder.

f. **Contingent Beneficiaries.** Should all beneficiaries hereunder die prior to the complete distribution of all assets hereunder, the remaining assets shall be distributed as follows: to the lineal descendants of Mary Carroll Seabrook Leatherman and S. Richard Leatherman, Jr., per stirpes.

4. **Spendthrift Provision.** The interests of beneficiaries in principal or income of this Trust shall not be subject to claims of their creditors or others, nor to legal process and may not be voluntarily or involuntarily alienated or encumbered except as herein provided. Any interest contained herein for any married beneficiary shall be for such beneficiary's sole and separate use, free from the debts, contracts and control of any spouse such beneficiary may ever have.

5. **Acceptance by Trustee.** The Trustee hereby accepts the Trust created by this Agreement and agrees to carry out the provisions hereof on its part according to the best of its ability, but shall not be responsible for any mistake in judgment or for any decrease in value of or loss to the Trust Estate, or for any cause whatsoever, except its own bad faith or gross negligence.

6. **Concerning the Trustee.** The Trustee and its successors shall receive proper and just compensation for its services as such, and may charge same to income or principal, as it deems appropriate, shall not be required to give any bond or security, to make or subscribe any oath, and shall not be required to file any inventory or accounting with any court, all of which is hereby waived; provided, however, that at least annually, the Trustee shall upon request prepare and deliver

to each adult beneficiary, or to the person who has the care or custody of any minor beneficiary, a written report showing all receipts and disbursements of both principal and income not previously reported, and a brief description of the securities and property in which the principal of the Trust Estate is then invested.

If at any time the Trustee or its successors shall have reasonable doubt as to any power, authority or duty of the Trustee in the administration of the trust herein created, it shall be lawful for the Trustee to obtain the advice and counsel of reputable legal counsel, without resorting to the courts for instructions, and the Trustee shall be fully absolved from any liability and damage or detriment to the trust estate or any beneficiary thereof by reason of anything done, suffered or omitted pursuant to advice of said counsel given and obtained in good faith; provided, however, that nothing contained herein shall be construed to prohibit or prevent the Trustee in all proper cases from applying to a court of competent jurisdiction for instructions in the administration of the trust estate in lieu of obtaining advice of counsel.

7. Powers of Trustee. The Trustee and its successors shall have all the powers, authority, privileges and immunities as provided and enumerated in Tennessee Code Annotated Section 35-50-110, including any amendments thereto, and same is expressly referred to and incorporated herein by this reference. The Trustee and its successors shall have all the further powers, privileges and immunities reasonably required for the efficient administration of the Trust Estate created hereunder and the Trustee, and its successors, shall have the power to do and perform all things and acts, and to deal with the Trust Estate and each and every part hereof, as in the judgment and discretion of the Trustee may seem to be in the best interest of the Trust Estate.

Notwithstanding anything contained or implied herein to the contrary, no Trustee, while serving hereunder, shall have the power to make any distributions which would defray any obligations of support the Trustee may have with respect to any beneficiary hereunder or have or exercise any other discretion or powers which would cause the assets of this Trust to be included in the estate of the Grantor or his spouse or **IRENE L. BROWNLOW**, or her spouse. The Trustee, who is then serving, shall not use any income of this Trust to pay premiums on insurance on the life of the Grantor or his spouse or exercise any other discretion or powers which would cause the income of this Trust to be taxed to the Grantor or his spouse.

If at any time this trust contains any property that does not qualify for an applicable generation skipping exemption so that the assets included in this trust have an inclusion ratio of more than zero for generation skipping tax purposes, then any property not so qualifying shall be placed in a separate trust to be administered and distributed by the Trustees in the same fashion as the initial trust created hereunder, it being Grantor's intention that all assets qualifying for a generation skipping exemption be administered separately from those not so qualifying.

Upon the death of any beneficiary, the Trustee, within the Trustee's discretion may purchase assets from such deceased beneficiary's estate at a fair value. The propriety of the purchase, the amount of such assets purchased, and the ascertainment of fair value shall be solely within the

discretion of the Trustee, and the Trustee shall incur no liability as a result of such purchase or purchases, whether or not such assets constitute investments which may be "legal investments" for trustees in this state. In addition, the Trustee may, within its discretion, make loans and advances to a deceased beneficiary's estate or to any trust created by the deceased beneficiary on any terms deemed advisable to the Trustee, including loans without security and without interest. The Trustee shall not be liable in any way for any loss resulting to the trust estate by reason of its exercise of this or any of the foregoing powers.

8. **Change or Succession of Trustee.** In the event that either of the Co-Trustees appointed hereunder are unable or unwilling to serve, or to continue to serve, as Trustee hereunder, then **NATIONAL BANK OF COMMERCE**, Memphis, Tennessee, shall serve as successor Co-Trustee. However, if both of the individual Co-Trustees are unable or unwilling to serve, or to continue to serve as Co-Trustee hereunder, then **NATIONAL BANK OF COMMERCE**, Memphis, Tennessee, shall serve as sole Trustee, with full power to act, as the case may be, it being Grantor's intention that at all times at least two trustees shall serve hereunder except in the case of **NATIONAL BANK OF COMMERCE**, Memphis, Tennessee after the named individuals are unable to serve, in which event **NATIONAL BANK OF COMMERCE**, Memphis, Tennessee may serve as sole Trustee hereunder.

At any time, a majority of the adult beneficiaries of this Trust may remove the then acting Trustee(s) (other than the initial Trustees) and replace them with a successor who must be a national bank or trust company possessing trust powers and having capital and surplus in excess of \$50,000,000.00.

If it becomes necessary under applicable law in any jurisdiction to appoint a sole or Co-Trustee to satisfy any local law residency requirements, then Grantor hereby grants to the Trustee appointed herein the right to appoint a sole or Co-Trustee to serve for that purpose and any sole or Co-Trustee so appointed shall have all of the rights, powers, privileges and immunities as are herein granted to an originally named Trustee.

In the event that **NATIONAL BANK OF COMMERCE** shall be merged or otherwise consolidated into a successor organization which continues the banking business and a trust department, such successor organization shall have all the powers, privileges and immunities as are herein granted to the said **NATIONAL BANK OF COMMERCE**.

9. **Irrevocability.** This Trust is irrevocable, and the Grantor relinquishes all right to alter, amend, revoke or terminate this Agreement.

10. **Construction of Certain Words.** Whenever the sense of this document requires it, the singular shall be construed to include the plural and the plural the singular, and wherever the masculine, feminine or neuter gender is used, each shall be construed to include either or both of the others if the sense of this document so requires. For purposes of this trust, legally adopted children of any person shall be treated the same as natural children of that person.

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11. Law Governing. The Trust hereby created shall be administered in the State of Tennessee and in all respects shall be governed by the laws of the State of Tennessee.

12. Titles of Paragraphs. The several titles of the various paragraphs of this Trust Agreement are inserted solely for convenience of reference and shall not be deemed in any way to enlarge, limit, or affect the provisions to which they relate.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first above written.

Mary Carroll Leatherman  
MARY CARROLL LEATHERMAN, Grantor

S. Richard Leatherman Jr.  
S. RICHARD LEATHERMAN, JR., Grantor

Irene L. Brownlow  
IRENE L. BROWNLOW, Trustee


Girard P. Brownlow  
GIRARD P. BROWNLOW, Trustee

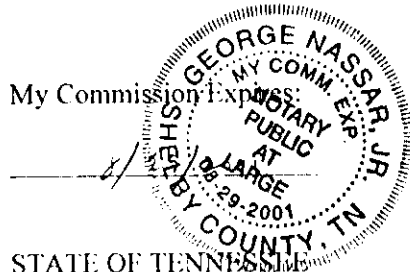
STATE OF TENNESSEE

COUNTY OF SHELBY

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared **MARY CARROLL LEATHERMAN**, with whom I am personally acquainted, and who, upon her oath, acknowledged that she executed the foregoing instrument for the purposes therein contained, and acknowledged that she executed and delivered the same as her free act and deed.

WITNESS my hand and Notarial Seal of office this 27<sup>th</sup> day of June, 1998.

  
NOTARY PUBLIC




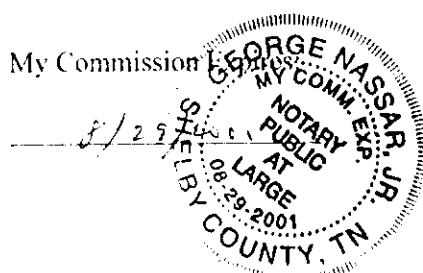
STATE OF TENNESSEE

COUNTY OF SHELBY

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared **S. RICHARD LEATHERMAN, JR.**, with whom I am personally acquainted, and who, upon his oath, acknowledged that he executed the foregoing instrument for the purposes therein contained, and acknowledged that he executed and delivered the same as his free act and deed.

WITNESS my hand and Notarial Seal of office this 27<sup>th</sup> day of June, 1998.

  
NOTARY PUBLIC




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STATE OF TENNESSEE

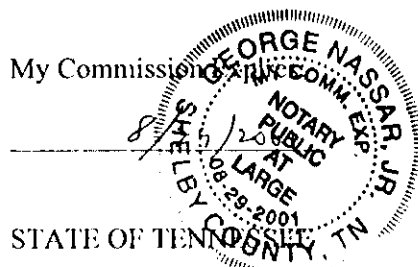
COUNTY OF SHELBY

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared **GIRARD P. BROWNLOW**, with whom I am personally acquainted, and who, upon his oath, acknowledged that he executed the foregoing instrument for the purposes therein contained, and acknowledged that he executed and delivered the same as his free act and deed.

WITNESS my hand and Notarial Seal of office this 27<sup>th</sup> day of June, 1998.

  
NOTARY PUBLIC

My Commission Expires




STATE OF TENNESSEE

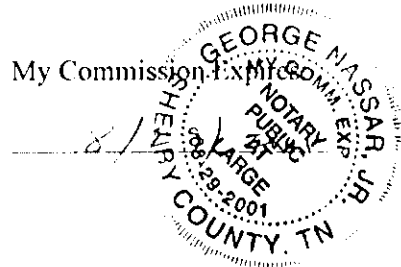
COUNTY OF SHELBY

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared **IRENE L. BROWNLOW**, with whom I am personally acquainted, and who, upon her oath, acknowledged that she executed the foregoing instrument for the purposes therein contained, and acknowledged that she executed and delivered the same as her free act and deed.

WITNESS my hand and Notarial Seal of office this 27<sup>th</sup> day of June, 1998.

  
NOTARY PUBLIC

My Commission Expires



This instrument was prepared by  
and return to:  
Oscar C. Carr, III  
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